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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS G. TRIEBES,
MARY E. KISTER and
KERMIT R. LITTLETON

Appeal 2008-1299
Application 10/036,743
Technology Center 1700

Decided: February 21, 2008

Before BRADLEY R. GARRIS, CHARLES F. WARREN, and
THOMAS A. WALTZ, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 54-63, and 65-70. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants claim an elastomer glove that comprises a substrate body having a layer made of elastomeric block copolymer and a chemical protection layer overlying the outside surface of the substrate body, the chemical protection layer being formed from a polymeric material that consists essentially of at least one crosslinked-modified silicone elastomer which imparts relative chemical resistance to the glove (claim 54).

Representative claim 54 reads as follows:

54. An elastomeric glove that comprises:

a substrate body shaped to the contours of a hand, said substrate body including a layer made of at least one elastomeric block copolymer, said substrate body having an inside surface and an outside surface;

a chemical protection layer overlying said outside surface of said substrate body, said chemical protection layer being formed from a polymeric material that consists essentially of at least one crosslinked, modified silicone elastomer, said crosslinked modified silicone elastomer imparting relative chemical resistance to the glove;

a donning layer overlying the inside surface of said substrate body;
and

an optional outer layer overlying said chemical protection layer;

wherein the chemical protection layer faces an external, environment exposed surface of the elastomeric glove and the donning layer faces an internal, body-contacting surface of the elastomeric glove.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

Miller

4,061,709

Dec. 6, 1977

Joung	4,302,852	Dec. 1, 1981
Littleton	5,792,531	Aug. 11, 1998
Littleton	6,730,380	May 4, 2004

Claims 54-60, 62, 63, and 66-70 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Littleton '531 in view of Joung, and claims 61 and 65 are correspondingly rejected over these references and further in view of Miller and Littleton '380 respectively.

None of the claims have been separately argued including the dependent claims which have been separately rejected. That is, the only arguments advanced by Appellants on this appeal relates to the rejection of the independent claims over Littleton '531 in view of Joung (*see* the Brief in its entirety). Therefore, in resolving the issue before us, we will focus on this rejection as applied against independent claim 54, which is the broadest claim on appeal.

The following dispositive issue is raised by the respective arguments presented in the Brief and the Answer. Would it have been obvious for one with ordinary skill in this art "to have provided the outside, external, environment-exposed surface of the elastomeric glove [disclosed] in Littleton ['531] with a . . . layer . . . formed from a polymeric material consisting essentially of at least one crosslinked, modified silicone elastomer . . . as suggested by Joung in order to provide increased external slip resistance and an improved grip which is important in handling delicate surgical instruments" (Ans. 4)?

On the record of this appeal, it is undisputed that the elastomeric glove of Littleton '531 corresponds to the claim 54 elastomeric glove in all respects except that Appellants' claimed glove includes a chemical protection layer overlying the outside surface of the glove body wherein the chemical protection layer consists essentially of a crosslinked, modified silicone elastomer which imparts relative chemical resistance to the glove. It is also undisputed that Joung discloses an elastomeric glove having a silicone layer on the outside surface thereof in order to provide increased slip resistance (col. 3, ll. 45-58). Finally, Appellants do not contest in their Brief the Examiner's finding (Ans. 3-4, 9) that Joung's aforementioned silicone corresponds to the silicone elastomer of claim 54.

These findings of fact support the Examiner's obviousness conclusion.

Contrariwise, Appellants argue that "no motivation or suggestion exists to modify the glove of Littleton ['531] as attempted by the Office Action" (Br. 5). This argument is unpersuasive. The motivation is expressed in the Examiner's afore-quoted obviousness conclusion. Specifically, an artisan would have been motivated to provide the outside surface of the Littleton '531 glove with a layer of silicone in order to obtain increased slip resistance as taught by Joung.

For some unexplained reason, Appellants believe this motivation would have been negated by the fact that the glove bodies of Littleton '531 and Joung are made of different materials (Br. 7). This belief has no perceptible merit based on the record before. To the contrary, this record establishes that the familiar elements of the Littleton '531 glove and the

outer silicone layer of Joung would have been combined in accordance with the method taught by Joung in order to obtain the advantage taught by Joung. As recently explained by the Supreme Court, the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1739 (2007).

Finally, Appellants point out that "neither of the cited references recognizes the advantage[] of the elastomeric gloves of independent claims 54 and 67 [which is that] the chemical protection layer will not substantially dissolve when contacted with certain chemicals or solvents, such as bone cement" (Br. 8).

However, in determining whether the subject matter of a claim is obvious, neither the particular motivation nor the avowed purpose of the inventor controls. *KSR*, 127 S. Ct. at 1741-42. What matters is the objective reach of the claim, and, if the claim extends to what is obvious, it is unpatentable under § 103. *KSR*, 127 S. Ct. at 1742. One of the ways in which claim subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the claim. *Id.*

Here, Joung teaches a known problem (i.e., potential slip) and a solution (i.e., an outer silicone layer to increase slip resistance) which would have been a desirable and therefore obvious advantage in the context of the Littleton '531 glove. The resulting glove of Littleton '531, when modified to include an outer silicone layer as taught by Joung, would be compositionally

identical to the glove defined by claim 54. Moreover, because Joung's silicone layer and the silicone elastomer of claim 54 are indistinguishable on this record as previously explained, the former presumptively must possess the same chemical resistance property possessed by the latter. *See In re Best*, 562 F.2d 1252, 1255 (CCPA 1977).

For the reasons set forth above and in the Answer, we agree with the Examiner that it would have been obvious for an artisan to provide the outside surface of the Littleton '531 glove with a silicone layer of the type and for the reasons taught by Joung. We hereby sustain, therefore, each of the rejections advanced on this appeal.

The decision of the Examiner is AFFIRMED

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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